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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 30, 1999

BY HAND

Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, SW -- Room TW-A325
Washington, D.C. 20554


Re: CC Docket No. 98-141

Dear Ms. Salas:

On July 29, 1999, Steven Gorosh, General Counsel of NorthPoint Communications, Inc. and Richard Metzger of Lawler, Metzger, and Milkman, LLC, counsel to NorthPoint, met with William Bailey, Legal Adviser to Commissioner Furchtgott-Roth, James Burns and Chad Schweitzer, interns in the Office of Commissioner Furchtgott-Roth, and Dorothy Atwood, Legal Adviser to Chairman Kennard. In these meetings, Messrs. Gorosh and Metzger presented NorthPoint's views on the pending merger between SBC Communications, Inc. and Ameritech Corporation. NorthPoint's position on the proposed merger is set forth in its comments in the above-referenced proceeding and the enclosed document.

Pursuant to section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. §1.1206(b)(1), an original and one copy of this letter and enclosure are being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,


A. Richard Metzger, Jr.

Enclosure

cc: Dorothy Atwood
William Bailey
James Burns
Chad Schweitzer

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NorthPoint Communications Update

- NorthPoint is a wholesale provider of broadband, last-mile digital subscriber line (DSL) connections that permit ISPs, OSPs, and CLECs to connect end-users to their networks with lightning-fast, always-on connections
- NorthPoint provides DSL services to underserved small businesses and consumers in 24 markets nationwide
 - Atlanta
 - Austin
 - Baltimore
 - Boston
 - Chicago
 - Cleveland
 - Dallas
 - Denver
 - Detroit
 - Houston
 - Los Angeles
 - Miami/Ft. Lauderdale
 - New York
 - Philadelphia
 - Phoenix
 - Pittsburgh
 - Portland
 - Raleigh/Durham
 - San Diego
 - San Francisco
 - Seattle
 - St. Louis
 - Tampa / St. Petersburg
 - Washington D.C.
- NorthPoint has secured collocation space in 1,026 central offices as of June 30, 1999 that serve 30M residential lines and 4M business lines
- NorthPoint is well-capitalized, having raised \$650M in debt and equity for network buildout and growth
- NorthPoint has built an innovative, state-of-the art network. NorthPoint recently won the SuperQuest award for best local network against ILEC finalists, including US West
- NorthPoint has strong strategic partners including Microsoft, Intel, Tandy (Radio Shack), Cable & Wireless, Frontier, Level 3, ICG, Verio

The Proposed Merger Conditions Are Critical For Residential Broadband Choice

- NP's deployment, expertise, partners, and capital position it to enter aggressively the residential market
 - Key strategic partnerships aimed specifically at providing broadband services to residential users (Tandy, Microsoft, Intel)
 - NorthPoint is a pioneer in testing G.Lite (splitterless, consumer focused ADSL) interoperability and deployment in trial with Intel Corporation
 - But, residential competition cannot occur without regulatory relief with respect to pricing, co-location, and loops
- Proposed conditions for SBC/AIT merger are a breakthrough for providing the platform for the deployment of advanced services to residential consumers
- Modest clarifications and revisions to SBC/AIT draft will ensure that the pro-competitive, pro-consumer goals of the merger conditions are achieved

Merger conditions are a "win-win-win" by benefiting consumers with new competitive choices, competitors with an opportunity to compete on fair and equitable terms, and SBC/AIT by rewarding pro-competitive policy and implementation with merger approval

Substantial Benefits From Proposed Merger Conditions

- **Separate Affiliate**
 - Establishes the simple, but critical rule that the separate affiliate must deal at arm's length for the purchase of collocation, loops, OSS and other bottleneck facilities on terms, prices, conditions and intervals *identical* to competitive LECs
- **Line sharing and loop discounts**
 - Immediate mandatory line sharing or, alternatively, interim surrogate pricing for line sharing is critical to effective DSL CLEC entry
- **Reasonably quick collocation implementation**
 - Merger closing conditioned upon third party certification that SBC/AIT has implemented tariffs and interconnection agreements that fulfill the Commission's sound, but to date unimplemented, collocation remedies
- **Improved OSS for Advanced Services**
 - Establishes requirement to implement OSS to support competitive advanced services, EDI implementation
 - Establishes requirement that SBC/AIT provide critical loop makeup information to competitive LECs
- **Supplemental nationwide performance measures and enforcement penalties**
 - Regional templates with significant penalties that can be supplemented by state and federal rules

Clarifications to Proposed SBC/AIT Draft Will Ensure That Benefits Are Realized

- *Clarify that conditions are an overlay*
 - Existing and future state and federal rules to enforce 251, 271 and pro-competitive goals of the Act (e.g. pick & choose rule, line sharing and advanced services rulemakings) are not limited or foreclosed
- *Clarify limits of affiliation with advanced services subsidiary*
 - Clarify that 272 requirements apply save for express narrow exceptions
 - Conform affiliate to NorthPoint/Ameritech Affiliate comments
 - Limit equipment transfers to essential DSLAMs and packet switches in order to ensure against the removal of bottleneck facilities from SBC/AIT to affiliate
 - Include specific audit mechanism to ensure compliance with separate affiliate limits
- *Remedy the "sunset squeeze"*
 - The term of the SBC/AIT obligations begins to run immediately, whereas a number of the obligations do not commence for many months or years after the merger closing. Toll the conclusion of the obligations until implementation is complete, or delay sunset for a longer period (more than 3 years)

Clarifications to Proposed SBC/AIT Draft Will Ensure That Benefits Are Realized (cont'd)

- *Clarify line sharing conditions*
 - Eliminate unnecessary “technical feasibility” and “commercial volume” conditions or make contemporaneous affirmative determinations
 - Ensure that absence of “real” shared line access during implementation period does not prejudice DSL CLECs by eliminating NRCs for stand-alone loops that DSL CLECs are required to obtain, or applying “Surrogate Line Sharing” discounts to NRCs during implementation period (affiliate should bear similar NRC charges for loop provisioning during interim period)
 - Toll 4-year line sharing sunset based on state-by-state line sharing implementation
 - Eliminate or substantially reduce unprecedented conditioning charges proposed in Attachment C
- *Tighten Collocation Implementation*
 - Ensure that auditor report affirms actual, not intended compliance with all FCC rules; require federal collocation tariffs

Clarifications to Proposed SBC/AIT draft will ensure that benefits are realized (cont'd)

- *Firm OSS commitments*

- Ensure that waiver of OSS access charges is not undermined by high development costs and increased UNE rates in "backdoor" recapture; ensure that separate affiliate pays all OSS charges, including any OSS costs related to line sharing
- Ensure that loop makeup data are provided to CLECs to permit a variety of DSL offerings
 - ILECs have designed a retail ordering interface ("green-red-yellow" interface) for their own customer service reps to use in offering their own, specific DSL products to end users, but have no similar retail interface for competitors' varied DSL products
 - ILECs must either give underlying loop makeup data to competitive LECs to design their own specific ordering interfaces, or design retail, product-by-product "green-red-yellow" interfaces for each CLEC as they do for their own retail advanced services affiliate
 - Ensure that Loop Makeup Data are robust, including loop length, gauge, length and location of bridged taps, loading coils, repeaters or other electronics, and access to alternate copper
- Eliminate OSS implementation "loopholes" that shift disproportionate burden to CLECs. Substitute SBC/AIT arbitrator list for timely and effective enforcement that is non-discriminatory

Clarifications to Proposed SBC/AIT Draft Will Ensure That Benefits Are Realized
(cont'd)

- Flesh out performance measures
 - Ensure that performance measures for wholesale DSL loop provisioning are not inferior to ILEC retail DSL services in any respect
 - Ensure that penalty levels do not cause “cost of business” defiance by providing greater-of penalty amount or NRC as a CLEC remedy

IXC and CLEC Concerns Merit Consideration But Ultimately Are Unconvincing

“Conditions will dilute State, Commission authority on 251 and 271 matters”

Some commenters complain that the proposed merger conditions “lower the bar” on State and Federal requirements and “prejudge” the market opening conditions in section 271. SBC/AIT reply does not allay these concerns. (See SBC/AIT reply n.10 [“the open markets created by this merger will be the catalyst for section 271 relief...”])

- ✓ Chairman clarified in his NARUC remarks that nothing in merger conditions would dilute State authority to impose additional merger requirements and do not prejudice compliance with section 251 or 271 obligations
- ✓ Any order adopting conditions should state clearly that they supplement, rather than supplant, existing or future obligations that the FCC or state commission may impose nor do they prejudice the outcome in any SBC/AIT 271 proceeding

“The conditions are not good enough”

Some commenters complain that the conditions – including the separate affiliate, line sharing, and related matters – are not as effective or as well crafted as rules the Commission is likely to issue shortly in pending proceedings.

- ✓ This concern is related to the first, and is solved by a clear statement that nothing in the merger conditions prejudices pending FCC actions but, to the contrary, shows that many of the proposed remedies before the Commission are readily achievable (line sharing, affiliate)
- ✓ Permitting the “best” to be the enemy of the “good” will disserve consumers by giving them nothing. These conditions are a sound basis for promoting competition. Failure to implement the proposed conditions as revised and clarified, may result in the failure to implement *any* conditions, a defeat for consumers, competition and the goals of the Act